

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

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THE HONOURABLE MRS.JUSTICE V.PARTHIBAN

W.P.No.21449 of 2013

Ms.Innacentia,

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Petitioner

-Vs-

1. The State of Tamilnadu by its Secretary to Government Finance (pension) Department, Secretariat, Chennai.
 2. The Director of Elementary Education, College Road, Chennai.
 3. The District Elementary Education Officer, Coimbatore District, Coimbatore.
 4. The Assistant Elementary Education Officer, Pollachi (South) Coimbatore District.
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Mandamus to direct the respondents 1 to 4 to permit the petitioner to continue her Old TPF account in A/c No.310934 with effect from 07.12.2006, by considering the petitioner's representation dated 08.07.2013 within a reasonable time to be fixed by this Hon'ble court.

For Petitioner : M/s.A.K.Manickam
For Respondent : T.M.Pappiah (R1 to R4)
Special Government Pleader

O R D E R

Writ petition has been filed for issuance of a Mandamus to direct the respondents 1 to 4 to permit the petitioner to continue her Old TPF account in A/c No.310934 with effect from 07.12.2006, by considering the petitioner's representation dated 08.07.2013 within a reasonable time to be fixed by this court.

2.The case of the petitioner is that she had completed Secondary Grade Teacher Training in the year 1996 and she has taken up employment in the Government Aided School as Teaching Assistant initially. Thereafter, she was appointed as Secondary Grade Assistant in the same School on 16.10.1996 and her appointment was also approved by the District Elementary Education Officer by his proceedings dated 23.12.1996. She was fixed in the regular pay scale as admissible to Secondary Grade Assistant. While working as Secondary Grade Assistant in a Government Aided school, the petitioner was appointed in the Government School as Secondary Grade Teacher on 01.12.2006 by the proceedings of District Elementary Education Officer, the third respondent herein. Pursuant to the appointment, she was allotted to the Municipality Middle School, ABT, Pollachi (South), Coimbatore District. In view of the appointment in the Government school, the petitioner was relieved on 02.12.2006. The next day being a holiday, the petitioner could not report for duty. On 04.12.2006, the petitioner reported for duty. She was informed that there is some confusion as to joining in the post. However, eventually, she joined the post on 07.12.2006. While so, the earlier service rendered by the petitioner in the Government Aided School was not considered for the purpose of continuing Old TPS Account in A/C.No.310934 with effect from 07.12.2006 on the ground that there was a delay of three days in the petitioner joining the Government School. In the said circumstances, the petitioner sent a representation on 08.07.2013 to the second respondent. But there was no action forthcoming from the respondents. In

view of the said facts as stated above, the petitioner is before this Court seeking the relief as stated supra.

3.The learned counsel for the petitioner would submit that there was no fault on the part of the petitioner in joining the post in the Government School in a matter of 2 or 3 days delay and the so called break in service is liable to be condoned. The learned counsel would also placed reliance on the decision of this court passed in WP.No.28154 of 2011(N.Baskar Vs. The Director of Elementary Education, Chennai and Others)2014(8) MLJ 341. In the said decision, this Court has directed to condone the delay of 13 days break in service on the ground that it was not the fault of the employee concerned, but the delay was due to administrative reasons.

4.In the instant case, according to the learned counsel for the petitioner, the delay was very short and that too, the fault was not on the part of the petitioner. Therefore, he would request this Court to apply the decision of this Court and allow the writ petition as prayed for.

5.Upon notice, Mr.T.M.Pappiah, the learned Special Government Pleader has filed his counter affidavit. As per the counter statment, the relief sought for by the petitioner is not liable to be granted, in view of the break in service.

6.However, considering the rival submissions of the parties and after perusing the pleadings and materials on record, this Court is of the firm view is that so called delay in the petitioner joining the Government post, cannot at all attributed to the petitioner. The petitioner, having been relieved on 02.12.2006, and 03.12.2006 being a holiday, returned for work on 04.12.2006 itself. But however, she was allowed to join duty only on 07.12.2006. Therefore, the so called break in service cannot be held against the petitioner and it cannot be accepted.

7.In the light of the above negations, this Court has no hesitation to allow the writ petition in the said circumstances. Hence, the writ petition is allowed and the third respondent is directed to permit the petitioner

to continue her Old TPF account in A/c No.310934 with effect from 07.12.2006 by treating the period from 02.12.2006 to 06.12.2006 as no break in service. An order shall be passed to that effect and such exercise shall be completed within a period of one month from the date of receipt a copy of this order. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
The State of Tamilnadu
Finance (pension) Department,
Secretariat,
Chennai.
2. The Director of Elementary Education,
College Road,
Chennai.
3. The District Elementary Education Officer,
Coimbatore District,
Coimbatore.
4. The Assistant Elementary Education Officer,
Pollachi (South)
Coimbatore District.

+1cc to M/s.A.K.Manickam, Advocate, S.R.No.51478

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AR(CS V)
CU(18/08/2017)